In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-559

HECK'S, INC., PETITIONER

v.

FOOD STORE EMPLOYEES UNION, LOCAL 347, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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1. In its initial proceeding in this case, the National Labor Relations Board found that Heck's had engaged in unfair labor practices in resisting the organization drive of Food Store Employees Union, Local 347, Amalgamated Meat Cutters & Butcher Workmen, AFL-CIO, at petitioner's Clarksburg, West Virginia, retail store, 172 NLRB 2231. The court of appeals enforced the Board's order, but remanded the case to the Board for reconsideration of the union's request for additional remedies. 433 F. 2d 541. On July 1, 1971, the Board amended its original order, granting only part of the union's request for additional remedies. 191 NLRB No. 146. Heck's participated in each of these proceedings.

On July 12, 1971, the union filed a new petition in the court of appeals to review the Board's amended order insofar as it denied the union's claim for additional remedies. Heck's, although served with a copy of the petition, did not then move to intervene in the proceeding. On March 21, 1973, the court of appeals enforced the Board's amended order, but directed the Board also to grant the union's request for litigation and organizational expenses.[1] 476 F. 2d 546. On April 4, 1973, Heck's moved to intervene in the case for the purpose of seeking rehearing *en banc*, and, if necessary, review by this Court, of the judgment insofar as it enlarged the Board's order. On May 18, 1973, the court of appeals denied Heck's motion to intervene, and, on June 29, 1973, the court denied its petition for rehearing respecting the denial of intervention. (Pet. 2, 5.)

2. The basic question presented by the petition is whether the court below erred in denying Heck's post-decision motion to intervene for the purpose of seeking further review of the action of the court of appeals in enlarging the Board's amended order. Rule 15(d) of the Federal Rules of Appellate Procedure requires that "A motion for leave to intervene * * * shall be filed within 30 days of the date on which the petition for review is filed." Heck's would have been entitled to intervene in the court proceeding had it made timely application. *United Automobile Workers* v. *Scofield*, 382 U.S. 205.

Although served with a copy of the union's petition to review, which indicated its intention to seek addi-

[1] The Board has petitioned for a writ of certiorari to review the court of appeals' modification of its order. *National Labor Relations Board* v. *Food Store Employees Union, Local 347*, No. 73-370.

tional remedies, Heck's elected to wait until after the court of appeals had entered a decision adverse to it before moving to intervene. In these circumstances, the court of appeals did not abuse its discretion in denying Heck's belated motion to intervene. "The requirement of timeliness is not without foundation. The interest in expeditious administration of justice does not permit litigation interminably protracted through continuous reopening." *United States* v. *Blue Chip Stamp Co.*, 272 F. Supp. 432, 436 (C.D. Calif.), affirmed *sub nom. Thrifty Shoppers Scrip Co.* v. *United States*, 389 U.S. 580.

Heck's contends (Pet. 20) that, if it is not allowed to intervene, it is precluded from seeking review of the court of appeals' adverse judgment. That disability was fully apparent when the union filed its petition for review and served a copy thereof on Heck's. By declining to avail itself of the opportunity to intervene then, Heck's lost the right to seek review accorded to parties to the proceeding.

In any event, the matters as to which Heck's would seek review are covered by the petition for certiorari which the Board has filed, No. 73-370 (see n. 1, *supra*). If that petition is granted, the Board has no objection to Heck's participation in No. 73-370, provided such participation does not enlarge the issues presented by the Board.[2]

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[2] Heck's has moved to intervene in No. 73-370 (Pet. 27-29).

The petition for a writ of certiorari in No. 73-559 should be denied.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

PETER G. NASH,
General Counsel,
National Labor Relations Board.

NOVEMBER 1973.